

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5174 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

PURSHOTTAM MOHANLAL MOCHI

Versus

PETLAD TEXTILES MILLS

Appearance:

MR P UPADHYAY for MR. MUKESH H RATHOD for Petitioner
MR GM JOSHI for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 08/09/2000

ORAL JUDGEMENT

Being aggrieved by an order made by the Labour Court, Nadiad on 4.11.1988 in Recovery Application No. 62 of 1983, the petitioner has preferred this petition inter alia praying to quash and set aside the aforesaid order in the Recovery Application, and to direct the

Respondent to pay the difference of wages for the period from 1976 to 1981 to the petitioner, and/or to direct the Labour Court, Nadiad to decide the said Recovery Application in accordance with law and as per the submissions made and to order to pay the difference of wages for the aforesaid period.

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#. Before the Presiding Officer of the Labour Court, an application was tendered interalia submitting that the petitioner was working since 19.9.1976 as Belt (Leather) Jointer. It is further contended that one Kanubhai who was discharging similar duties, was given all the benefits. However, the petitioner was paid daily wages of Rs.4-50 ps. from 19.9.1976 to 31.12.1976. Thereafter, from 1.7.1979 till the date of filing the petition, the petitioner was paid daily wages of Rs.8-37 ps. On behalf of the employer it was pointed out that the application was not maintainable and that the petitioner was not working from 19.6.1976 as alleged. On appreciation of evidence, the Labour Court arrived at a conclusion that the applicant has not proved that he was working at the relevant time as a Cobbler, (Belt Jointer (Leather)) and therefore the status cannot be decided in an application under section 33 (c)(2) of the Industrial Disputes Act. The Labour Court also arrived at a conclusion that till 1981 it was not decided that he was working as claimed. The Labour Court was of the opinion that he should have lead sufficient evidence to prove that since 1976 to 1981 he was working as such. The Labour Court has also perused the order made by the Labour Court in an application for issuance of permanent pass and has observed that the order does not refer to the effect that the pass is to be issued with retrospective effect since 1976.

#. Before this Court it is submitted that the Labour Court has erred in appreciating the evidence and ought to have accepted the case pleaded by the petitioner and ought to have given all the benefits. From the order it is required to be noted that the petitioner was working and was paid daily wages at Rs.4-50 from 1.6.1976 to 31.12.1976. Thereafter, there is nothing on the record to show that the petitioner was working. It appears that again he was taken in service from 1.1.1979. At page 11, at two places it is specifically mentioned about these dates. It is also clear that he was a daily rated workmen and not a permanent workman. The Labour Court has arrived at a conclusion that the petitioner has not lead any evidence. Even before this Court, no evidence is produced to indicate that he was working as permanent

workman from 1976 to 1981.

#. In view of the finding recorded by the Labour Court on appreciation of evidence, it would not be proper to interfere with the findings of the fact recorded. Hence this petition is dismissed. Rule is discharged. No order as to costs.

csm./ (B.C. PATEL, J.)